

5-28-2013

State v. Orr Respondent's Brief Dckt. 39161

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"State v. Orr Respondent's Brief Dckt. 39161" (2013). *Idaho Supreme Court Records & Briefs*. 4421.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/4421

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

ARLYN V. ORR,

Defendant-Appellant.

No. 39161

Madison Co. Case No.
CR-2011-536

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF MADISON

HONORABLE GREGORY W. MOELLER
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

RUSSELL J. SPENCER
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

SPENCER J. HAHN
Deputy State Appellate
Public Defender
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

ATTORNEY FOR
DEFENDANT-APPELLANT

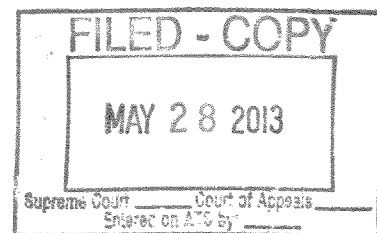


TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature Of The Case	1
Statement Of The Facts And Course Of The Proceedings	1
ISSUE	3
ARGUMENT	4
Substantial Competent Evidence Admitted At Trial Supports The Jury's Conclusion That Orr Was Guilty Of Resisting And Obstructing An Officer	4
A. Introduction	4
B. Standard Of Review	4
C. The Evidence Presented At Trial Was Sufficient To Support The Jury's Verdict Convicting Orr Of Resisting And Obstructing An Officer	5
CONCLUSION	9
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

CASES

PAGE

<u>Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County</u> , 542 U.S. 177 (2004)...	6
<u>Minnesota v. Dickerson</u> , 508 U.S. 366 (1993).....	5
<u>Pennsylvania v. Mimms</u> , 434 U.S. 106 (1977).....	6
<u>State v. Bishop</u> , 146 Idaho 804, 203 P.3d 1203 (2009).....	5
<u>State v. Buell</u> , 145 Idaho 54, 175 P.3d 216 (Ct. App. 2008).....	7
<u>State v. Dolsby</u> , 143 Idaho 352, 145 P.3d 917 (Ct. App. 2006).....	8
<u>State v. Ferreira</u> , 133 Idaho 474, 988 P.2d 700 (Ct. App. 1999)	6
<u>State v. Fox</u> , 124 Idaho 924, 866 P.2d 181 (1993).....	8
<u>State v. Miller</u> , 131 Idaho 288, 955 P.2d 603 (Ct. App. 1997)	4
<u>State v. Moore</u> , 148 Idaho 887, 231 P.3d 532 (Ct. App. 2010).....	4
<u>State v. Reyes</u> , 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992).....	4
<u>State v. Wiedenheft</u> , 136 Idaho 14, 16-17, P.3d 873 (Ct. App. 2001).....	5
<u>State v. Wilkerson</u> , 114 Idaho 174, 755 P.2d 471 (Ct. App. 1988)	5
<u>Terry v. Ohio</u> , 392 U.S. 1 (1968)	5
<u>United States v. Cortez</u> , 449 U.S. 411 (1981)	5

STATUTES

I.C. § 18-101.....	8
I.C. § 18-705.....	5, 8
I.C. § 18-8004.....	6

STATEMENT OF THE CASE

Nature Of The Case

Arlyn V. Orr appeals from his conviction, following a jury trial, for resisting and obstructing an officer, arguing that the evidence presented to the jury was insufficient to support the conviction.

Statement Of The Facts And Course Of The Proceedings

While on patrol at around 12:20 a.m. on March 11, 2011, Deputy Scott noticed a black Isuzu Rodeo in the Crest Creek public parking lot. (Tr., p.139, Ls.14-21.) Deputy Scott approached the vehicle. (Tr., p.140, Ls.6-9.) As he drew near, Deputy Scott observed that the car was running, a person appeared to be asleep in the driver's seat, and there were five open cans of beer in the car. (Tr., p.140, Ls.14-18.) Deputy Scott attempted to get the driver's attention by knocking on the car's window. (Tr., p.141, Ls.1-3; p.142, Ls.16-20.) When that proved unsuccessful, Deputy Scott contacted dispatch to run the car's license plate, which showed that the vehicle belonged to Arlyn Orr. (Tr., p.142, Ls.20-22.) Deputy Scott called out Orr's name several times, but received no response. (Tr., p.142, Ls.22-23.)

Deputy Scott repositioned the camera in his patrol vehicle and then returned to Orr. (Tr., p.143, L.25 – p.144, L.3.) Again he knocked on the window and called out Orr's name. (Tr., p.144, Ls.4-5.) Then, noticing that the door was unlocked, Deputy Scott opened the door, reached in and turned off the ignition, and then continued trying to wake Orr. (Tr., p.144, Ls.5-19.) Upon opening the door, Deputy Scott smelled the odor of alcohol inside the vehicle. (Tr., p.144, Ls.9-14.) Ultimately, Deputy Scott had to shake Orr in order to wake him. (Tr., p.145, Ls.1-3.)

When Orr finally awoke, Deputy Scott introduced himself and informed Orr that he was with the Madison County Sheriff's Office and was there to check on him. (Tr., p.146, Ls.10-14.) Deputy Scott explained to Orr that he thought Orr had been drinking. (Tr., p.148, Ls.1-3.) He observed that Orr's eyes were bloodshot and glassy, his memory was impaired, he displayed poor judgment, his speech was slurred, and that his breath smelled like an alcoholic beverage. (Tr., p.148, Ls.11-21.) For roughly 20 minutes, Deputy Scott tried to get Orr to exit the vehicle and perform field sobriety tests, but Orr refused. (Tr., p.147, Ls.11-20.)

Corporal Wrigley arrived as back-up and together they tried to physically remove Orr from the vehicle, but Orr stiffened up his body so they could not. (Tr., p.160, Ls.3-12; p.208, L.13 – p.209, L.16.) Ultimately, to get Orr to cooperate, Corporal Wrigley had to pepper spray him and transport him to the sheriff's office. (Tr., p.160, L.19 – p.161, L.2; p.227, L.9 – p.228, L.5.) While there, Orr submitted to breath tests and blew a .187 and a .193. (Tr., p.247, Ls.16-25; p.280, Ls.2-9; p.281, Ls.8-15.)

The state charged Orr with felony driving under the influence, because he had been convicted of another felony DUI during the previous 15 years, with possession of an open container of alcohol, and with resisting and obstructing arrest. (R., pp.67-69.) Orr stood trial on the charges. (Tr., pp.1-445.) At the conclusion of the trial, the jury acquitted Orr of the open container violation, but found him guilty of the felony DUI and resisting and obstructing an officer. (R., p.70; Tr., p.437, Ls.5-21.) The district court entered judgment against Orr and sentenced him to ten years with three years fixed on the felony DUI and a concurrent 180 days on the resisting and obstructing arrest. (R., pp.76-77.) Orr filed a timely notice of appeal. (R., pp.71-73.)

ISSUE

Orr states the issue on appeal as:

Was the evidence sufficient to support Mr. Orr's conviction for resisting and obstructing a peace officer based on his refusal to perform field sobriety tests?

(Appellant's brief, p.4.)

ARGUMENT

Substantial Competent Evidence Admitted At Trial Supports The Jury's Conclusion That Orr Was Guilty Of Resisting And Obstructing An Officer

A. Introduction

After a jury trial, Orr was convicted of resisting and obstructing an officer. (R., p.70; Tr., p.437, Ls.14-21.) On appeal, Orr argues that there was insufficient evidence presented at trial to support his conviction. (Appellant's brief, pp.5-11.) Application of the relevant legal standards to the evidence presented at trial, however, shows that the jury's verdict is clearly supported by substantial competent evidence.

B. Standard Of Review

An appellate court will not set aside a judgment of conviction entered upon a verdict if there is substantial evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Miller, 131 Idaho 288, 292, 955 P.2d 603, 607 (Ct. App. 1997); State v. Reyes, 121 Idaho 570, 826 P.2d 919 (Ct. App. 1992). In conducting this review, the appellate court will not substitute its view for that of the finder of fact as to the credibility of witnesses, the weight to be given to the testimony, or the reasonable inferences to be drawn from the evidence. Miller, 131 Idaho at 292, 955 P.2d at 607. Moreover, the facts, and inferences to be drawn from those facts, are construed in favor of upholding the verdict. Id. In determining whether sufficient evidence to support a conviction was presented at trial, the Court reviews the evidence that was actually presented to the jury without regard to its ultimate admissibility. State v. Moore, 148 Idaho 887, 894, 231 P.3d 532, 539 (Ct. App. 2010).

C. The Evidence Presented At Trial Was Sufficient To Support The Jury's Verdict Convicting Orr Of Resisting And Obstructing An Officer

Resisting and obstructing an officer in the discharge of his duties is a crime under Idaho Code § 18-705. Resisting or obstructing an officer occurs when an individual “wilfully [sic] resists, delays or obstructs any public officer, in the discharge, or attempt to discharge, of any duty of his office....” I.C. § 18-705. “Duty” under the statute is limited to “those lawful and authorized acts of a public officer.” State v. Bishop, 146 Idaho 804, 817, 203 P.3d 1203, 1216 (2009) (quoting State v. Wilkerson, 114 Idaho 174, 180, 755 P.2d 471, 477 (Ct. App. 1988)). “When an officer conducts a legal search, he or she is performing a duty of his or her office under section 18-705.” Id. (citing State v. Wiedenheft, 136 Idaho 14, 16-17, 27, P.3d 873, 875-76 (Ct. App. 2001)). Accordingly, if evidence presented at trial showed that Orr resisted or obstructed police in their attempts to conduct a lawful search, then he was properly convicted of resisting and obstructing an officer. See Id. at 818, 203 P.3d at 1217.

The Fourth Amendment of the United States Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. Warrantless searches and seizures are generally considered unreasonable under the Fourth Amendment, “subject only to a few specifically established and well-delineated exceptions.” Minnesota v. Dickerson, 508 U.S. 366, 372 (1993) (internal citations and quotations omitted). One such exception is an investigative detention, such as a traffic stop, based upon reasonable suspicion that the suspect has been, is, or is about to be engaged in criminal activity. Terry v. Ohio, 392 U.S. 1, 21 (1968); United States v. Cortez, 449 U.S. 411, 417 (1981).

The evidence presented at trial showed that Deputy Scott came upon Orr in the driver's seat of his vehicle with the motor running and five open cans of beer in the car. (Tr., p.139, L.14 – p.140, L.18.) Orr was clearly in control of the vehicle as defined by Idaho law. See I.C. 18-8004(5). Deputy Scott attempted to wake Orr by knocking on the car's window, calling out Orr's name, and ultimately opening the car door and shaking Orr. (Tr., p.141, Ls.1-3; p.142, Ls.16-23; p.144, L.4 – p.145, L.3.) Upon opening the door, Deputy Scott smelled alcohol. (Tr., p.144, Ls.9-14.) Contacting Orr, he also observed that Orr had impaired memory, poor judgment, slurred speech, glassy and bloodshot eyes, and his breath smelled like an alcoholic beverage. (Tr., p.148, Ls.11-21.) Under the totality of these circumstances, Deputy Scott had reasonable suspicion to investigate a possible DUI.

Because he had reasonable suspicion of a DUI, Deputy Scott was authorized to detain Orr and investigate the crime. Terry, 392 U.S. at 21; Cortez, 449 U.S. at 417. During a traffic stop, an officer may direct the temporarily detained driver to step outside of the vehicle, whether for convenience or safety. Pennsylvania v. Mimms, 434 U.S. 106, 111 n.6 (1977). Likewise, an officer may request identification during a traffic stop. Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County, 542 U.S. 177, 185-86 (2004). Finally, as long recognized by the Court of Appeals, "the administration of field sobriety tests following a traffic stop is but an investigative detention." State v. Ferreira, 133 Idaho 474, 480, 988 P.2d 700, 706 (Ct. App. 1999).

The evidence presented at trial established that, once Orr was awake, Deputy Scott introduced himself and informed Orr that he was with the Madison County Sheriff's Office and was there to check on him. (Tr., p.146, Ls.10-14.) Deputy Scott

asked Orr a couple times what his name was, but Orr would not give it. (Tr., p.157, Ls.9-19.) Deputy Scott requested Orr's driver's license and proof of insurance, but Orr was uncooperative. (Tr., p.154, Ls.5-10.) Deputy Scott asked Orr to exit the vehicle to perform field sobriety tests, but Orr refused. (Tr., p.147, Ls.11-20.) Once Corporal Wrigley arrived, the officers attempted to physically remove Orr from the vehicle, but Orr stiffened up his body so they could not pull him out. (Tr., p.160, Ls.3-12.) Ultimately, Corporal Wrigley had to pepper spray Orr to get him to cooperate. (Tr., p.227, L.9 – p.228, L.5.) The evidence thus clearly established that Orr refused to obey Deputy Scott's lawful orders and delayed or obstructed the investigation of the DUI. Because the evidence clearly established that Orr resisted and obstructed Deputy Scott in the discharge of his duties, the jury properly concluded that Orr committed the offense of resisting and obstructing an officer.

On appeal, Orr argues that he has a constitutional right to refuse to perform field sobriety tests. (Appellant's brief, pp.5-10.) There is no such right. As explained by the Court of Appeals, "field sobriety tests may be conducted without consent during an otherwise permissible detention, where they are justified by reason of suspicion of DUI." State v. Buell, 145 Idaho 54, 56, 175 P.3d 216, 218 (Ct. App. 2008). Though an individual can prevent the administration of field sobriety tests by refusing to cooperate, "that power does not equate to a constitutional right to refuse." Id. Because Orr refused to comply with Deputy Scott's lawful orders, he is guilty of resisting and obstructing the officer.

Orr, citing to Bishop, further argues that "to be guilty of resisting or obstructing an officer, *the person must know* that the officer was attempting to perform a lawful and

authorized act.” (Appellant’s brief, pp. 10-11.) Orr’s interpretation of Bishop should be rejected. By asking this Court to adopt a subjective belief standard, Orr requests a mistake of law defense. But it is well settled that “[i]gnorance of the law is not a valid defense.” State v. Dolsby, 143 Idaho 352, 355, 145 P.3d 917, 920 (Ct. App. 2006) (citing State v. Fox, 124 Idaho 924, 926, 866 P.2d 181, 183 (1993)). Contrary to Orr’s assertions, Idaho Code § 18-705 does not require subjective belief, but simply requires that a defendant’s resistance be willful. I.C. § 18-705. As defined in the Idaho Code:

The word "wilfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

I.C. § 18-101(1). The evidence presented to the jury clearly established that Orr’s resistance to Deputy Scott’s lawful orders was willful.

Furthermore, Orr’s underlying contention on appeal—that he did not subjectively know that officers are authorized to investigate crimes—is disproved by Orr’s testimony during trial. During cross-examination, Orr was asked:

So if Deputy Scott approaches your vehicle in the night and sees you in the condition you were that night and he sees what appears to be open containers of alcohol in your vehicle and he sees that your engine is running, he has a duty to further investigate that; doesn’t he?

(Tr., p.353, Ls.14-19.) Ultimately, Orr admitted, “I’m going to assume that that’s probably what a deputy should do.” (Tr., p.353, Ls.23-24.) Orr’s contention at trial was that, despite Deputy Scott identifying himself as a police officer, wearing a uniform with his badge prominently displayed, and arriving in a marked patrol car, Orr did not know that Deputy Scott was in fact an officer of the law. (See Tr., p.349, L.20 – p.350, L.24.)


This claim was not credible, and the jury was well within its authority to reject Orr's contention. See Miller, 131 Idaho at 292, 955 P.2d at 607.

The evidence presented at trial clearly established that Orr resisted and obstructed an officer in the performance of his duties. The jury's verdict is supported by competent evidence and should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm Orr's conviction of resisting and obstructing an officer.

DATED this 28th day of May, 2013.




RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of May, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SPENCER J. HAHN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm